IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO.22 OF 2001

State of Goa
through Police Inspector
Verna Police Station,
Verna, Goa.....PETITIONER

VERSUS

1. Ram Sharma,
   s/o Prakash Sharma,
   r/o Village Dhnori,
   P.O.Salmerhi,
   Dist. Udhampur,
   Jammu & Kashmir-182 101;

2. N. Doni
   s/o Magni,
   r/o P.O. Talcher Town,
   First Gate, Dist.Angul,
   State Orissa.....RESPONDENTS.

Shri A.P. Lawande, Public Prosecutor, for the Petitioner.

Shri P.P. Singh, Advocate for the Respondent No.1, absent.

CORAM : A.S. AGUIAR,J.

DATED : MARCH 15, 2002.

ORAL ORDER

Heard the learned Public Prosecutor. None for Respondents though served.

2. By this Revision Application, the State seeks quashing of the Order dated 21st May, 2001 passed by the IInd Additional Sessions Judge, South Goa, Margao, whereby the Respondents/Accused have been discharged of the offences under Section 307

read with 34 of the Indian Penal Code.

3. A perusal of the impugned Order would show that the learned Sessions Judge has despite material on record, discharged the Accused. The learned Judge has appreciated the material on record as though he was trying the case and discharged the Accused/Respondents when, in fact, the learned trial Judge ought to have framed charges on the basis of material on record and thereafter proceeded to try the case by recording evidence of the witnesses. The impugned Order cannot be said to be one under Section 227 of the Criminal Procedure Code. The learned trial Judge, it appears, has not appreciated the scope and ambit of Section 227 of the Criminal Procedure Code and has misdirected himself in passing the said Order of discharge under Section 227.

4. The Apex Court in the case of **Supdt. & Remembrancer of Legal Affairs, West Bengal, v. Anil Kumar Bhunja and others** (AIR 1980 SC 52) has held as follows:-

> "At the stage of framing charges, the prosecution evidence does

not commence. The Magistrate has therefore, to consider the question as to framing of charge on a general consideration of the materials placed before him by the investigating Police Officer. The standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of Section 227 or 228. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence."

5. Again in the case of **State of M.P. v. S.B. Johari and others (2000 CRI.L.J.944), the** Supreme Court has observed as follows:-

> " It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed."

6. Clearly, the impugned Order discharging

the Accused/Respondents is improper and not sustainable in law and hence is hereby set aside. The learned IInd Additional Sessions Judge is directed to frame charges under Section 307 read with 34 of the Indian Penal Code and proceed with the trial according to law.

7. Criminal Revision Application is disposed of.

(A.S. AGUIAR)
JUDGE.

ac.